

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) CASE NO. 8:06CR248
)
Plaintiff,)
)
vs.)
)
JOSE ARTURO LARA-SOTELO,)
)
Defendant.)

This matter is before the Court on the Defendant's notice of appeal (Filing No. 171) and the clerk's memorandum regarding in forma pauperis status (Filing No. 173).

On August 16, 2007, the Defendant was resentenced to 97 months imprisonment and 5 years supervised release. (Filing No. 160.) The Amended Judgment was filed on August 17, 2007. (Filing No. 162.) After the resentencing hearing, the Defendant signed a Notice of Right to Appeal (Filing No. 161) indicating that he understood that any notice of appeal would have to be timely filed. On October 9, 2008, the Defendant filed his notice of appeal. (Filing No. 171.)

Federal Appellate Rule of Procedure 4(b)(1)(A) provides that, under the circumstances presented in this case, a criminal defendant's notice of appeal must be filed within 10 days of the entry of the judgment. Federal Appellate Rule of Procedure 4(b)(4) provides that the 10-day period may be extended by 30 days upon a finding of excusable neglect or good cause.

In this case, the notice of appeal is untimely. The Defendant has not shown excusable neglect or good cause. Therefore, the notice of appeal should be stricken as untimely.

IT IS ORDERED:

1. The Defendant's notice of appeal (Filing No. 171) is stricken as untimely; and
2. Because the notice of appeal is untimely,¹ In forma pauperis status on appeal is denied.

DATED this 16th day of October, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

¹The Defendant has previously been represented by appointed counsel in this court, although he has also been represented by retained counsel.